obstructions to navigation deemed unreasonable;[12] to fix the standard height of drawbars;[13] to establish rules necessary for the preservation of forests;[14] and to establish a uniform system of railroad accounts.[15] The old rule requiring the legislature to make the law confined the lawful exercise of discretion by administrative officials within narrow bounds.[16] Thus has come a distinct departure, and wide discretion is now permitted to executives, even to tell what the law is. Although in the Supreme Court cases it was demonstrated that the statute had provided some "primary standard" or "general rule," often it was only that of reasonableness; the significant reasoning appeared in the statement, that to deny the validity of such statutes "would stop the wheels of government."[17]

. The Porto Rican case is plainly right in following the controlling authorities,[18] likewise in denominating the Treasurer's duties administrative. But it is to be noted that the conception of what constitutes legislative powers so that their delegation is unconstitutional has changed, and that the exercise of certain discretionary power by administrative officers formerly considered legislative is now held unobjectionable.

THE FIVE PER CENT RATE CASE.[1] — The decision rendered this summer by the Interstate Commerce Commission in the so-called Five Per Cent Case is illustrative of the difficulties involved in regulating interstate commerce rates. *The Five Per Cent Case*, 31 I. C. C. 551.[2] The railroads serving official classification territory, which includes all that part of the United States from the Atlantic seaboard to the Mississippi River north of the Ohio River, joined in this proceeding to secure the Commission's approval of a so-called five per cent increase in their freight rates. The increases proposed ranged from five per cent to as high as fifty per cent on certain short-haul traffic, with a provision for a minimum increase of five cents per ton in all rates named in cents per ton when less than $1.00.

The Commission was unanimous in its decision, "that the net operat-

[12] Union Bridge Co. *v.* United States, 204 U. S. 364.

[13] St. Louis Ry. Co. *v.* Taylor, 210 U. S. 281.

[14] United States *v.* Grimaud, 220 U. S. 506.

[15] I. C. C. *v.* Goodrich Transit Co., 224 U. S. 194; Kans. City So. Ry. Co. *v.* United States, 231 U. S. 423.

[16] See cases *supra*, footnotes 7 and 8.

[17] Field *v.* Clark, 143 U. S. 649, 694; Buttfield *v.* Stranahan, 192 U. S. 470, 496; Union Bridge Co. *v.* United States, 204 U. S. 364, 385, 386, 387.

[18] The cases upholding the power of commissions to regulate rates, where the standard is that of reasonableness, furnish strong analogies. Chicago & N. W. Ry. Co. *v.* Dey, 35 Fed. 866 (1888); People *v.* Willcox, 194 N. Y. 383, 87 N. E. 517; Oregon R. & N. Co. *v.* Campbell, 173 Fed. 957; State *v.* R. Com., 52 Wash. 33, 100 Pac. 184; So. I. Ry. Co. *v.* R. Com., 87 N. E. 966 (Ind.); Louisville & N. R. Co. *v.* I. C. C., 184 Fed. 118. For a discussion of the recent Intermountain Rate Cases, where the Supreme Court did not object to a considerable delegation of such power, see RECENT CASES, p. 110.

[1] The facts involved in this important decision are so voluminous and complicated that an extended discussion of the principles involved cannot be attempted within the confines of this note, but it is thought that a brief résumé of the decision itself may be of interest to the profession.

[2] A rehearing of this case has already been ordered by the Commission on a petition by the railroads.

ing income of the railroads in official classification territory, taken as a whole, is smaller than is demanded in the interest both of the general public and the railroads." This general conclusion was based upon an examination of the results of railroad operation in this territory during the fourteen years from 1900 to 1913 inclusive. During this period the operating expenses of these roads increased 133 per cent, while gross operating revenues increased only 110 per cent. Moreover, the ratio of gross operating revenue to property investment has remained practically stationary since 1907, in spite of a constant increase in the volume of traffic. The ratio of net operating income to property investment was only 5.36 per cent in 1913, and gave every evidence of going as low as 4.35 per cent in 1914.

In view of this showing the Commission were agreed that the railroads were entitled to some increase in their revenues. The only questions were, whether the means proposed for affording this increase were reasonable, and whether the relief should be extended equally to all the roads in official classification territory. Upon these points the burden of proof was upon the carriers.[3]

Upon certain classes of heavy freight, namely, brick, tile, clay, coal, coke, starch, cement, iron ore, and plaster, in the transportation of which the use of larger cars has reduced operating costs, the proposed increases were refused as unreasonable. All increases in excess of five per cent, including the proposed minimum increase of five cents per ton in all rates stated in cents per ton not exceeding $1.00, were also refused. With these exceptions, however, it was agreed that the proposed five per cent increase in rates was a reasonable means of securing the necessary additional revenue.

The Commission were divided, however, upon the question whether the relief granted should extend equally to all railroads in official classification territory. This territory is divided into three subdivisions for rate purposes. The first includes the New England states. The second, known as trunk line territory, includes the country west of New England to Buffalo and Pittsburg. The third extends from Buffalo and Pittsburg to the Mississippi River, and is known as central freight association territory. The majority of the Commission ruled that the proposed five per cent increase should be allowed only as to intraterritorial rates within central freight association territory.

The majority reached the conclusion that the lines in central freight association territory were operating at a disadvantage as to rates from a consideration of the relative financial strength of these roads as compared with trunk line systems, and from a comparison of the average ton-mile returns in the two sections. Thus, of the seventeen weakest systems with an average net income of only 2.15 per cent in 1913, and an average net corporate income, after deducting all fixed charges, equal to 0.12 per cent, fourteen were found in central freight association territory. While of the ten most prosperous roads in official classification territory the majority were trunk line roads. The average gross revenue per mile of line operated was found to be considerably lower on central freight association lines, while the average rate of return per ton-

[3] U. S. COMPILED STATUTES, SUPPL. 1911, Tit. 56a, Ch. 1, Sec. 15.

mile on traffic moving over these roads in 1913 was 5.63 mills, as compared with 6.46 mills in trunk line territory. The majority also produced figures to show that the class rates prevailing in central freight association territory were, in general, much lower than comparable rates in other parts of the country.

Commissioners McChord and Daniels, in dissenting opinions, while conceding that the roads in central freight association territory might be at some disadvantage, contended that this difference was equally explainable on other grounds than a difference in rates, and that it was not so great as to justify any discrimination against the trunk line systems. Moreover, it was strongly urged that for transportation purposes the country from the Atlantic seaboard to the Mississippi River must be treated as an industrial unit. Thus, it was pointed out that most of the rates in central freight association territory are based on the rate from Pittsburg to Chicago, which is, in turn, 60 per cent of the rate from New York to Chicago. To permit a general increase in one part of this district and refuse it in another meant the disruption of all these differentials to the disadvantage of many shippers. It was also urged that local traffic should not be compelled to bear the entire burden of furnishing additional revenue to the central freight association roads, while the rates on through traffic remained unchanged.

The general conclusion to be drawn from a consideration of this decision is, that the railroads have mistaken their remedy. What is needed, it seems, is not so much a "blanket" increase in rates, as a general readjustment of rates, with a view to eliminating many inconsistencies and unremunerative charges. Thus, it was pointed out by the majority that the railroads now perform many incidental services for shipper and passenger for which no additional charge, or an unremunerative charge, is made. A readjustment of rates would enable the railroads to increase their revenue and at the same time distribute the burden more nearly according to the benefit.[4]

Apropos of these suggestions it was pointed out that there is still considerable room for increased economy of operation. The Commission especially emphasized the possibilities of greater freight-car efficiency, economies in fuel consumption, stricter regulation of the practice of granting free transportation to employees and their families, and a closer scrutiny of contracts with supply and subsidiary companies in which railroad officials are interested.

The majority also laid considerable stress on the fact that the railroads made no request for an increase in passenger fares, although the passenger service contributes nearly one-fourth of their operating revenue, and although investigation by the Commission disclosed that this service was being conducted at a very low rate of return, and in some cases even at a loss. Until recently, however, it has been thought that the numerous state statutes fixing maximum rates for intrastate rates made it impossible for the railroads to increase their interstate fares. But the decision of the United States Supreme Court in the Shreveport Rate Case,[5]

[4] For a more extended discussion of this phase of the rate problem see the Industrial Railways Case, 29 I. C. C. 212.

[5] 234 U. S. 342. For a discussion of this case see article by Wm. C. Coleman in this issue, p. 34.

holding that intrastate freight rates imposed by a state railroad commission may be changed by the Interstate Commerce Commission when they interfere with the proper regulation of interstate commerce, indicates a possible solution of this difficulty.[6]

RECENT CASES

AGENCY — NATURE AND INCIDENTS OF RELATION — FATHER'S LIABILITY FOR TORTS OF SON. — The plaintiff was injured by the negligent running of the defendant's automobile by the defendant's son. The son habitually drove the car with his father's consent, and at the time of the accident was using it entirely for his own pleasure.

Held, that the defendant is liable on the principles of agency. *Davis* v. *Littlefield*, 81 S. E. 487 (S. C.).

Held, that the defendant is liable because an automobile is a dangerous instrumentality. *Hays* v. *Hogan*, 165 S. W. 1125 (Mo.).

Held, that the defendant is not liable. *Heissenbuttel* v. *Meagher*, 162 N. Y. App. Div. 752.

For a discussion of the principles involved, see NOTES, p. 91. See also 2 HARV. L. REV. 734.

AGENCY — PRINCIPAL'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTOR — LIABILITY FOR EXPLOSIVES. — The defendant hired an independent contractor to load a ship with dynamite. By the negligence of a servant of the independent contractor, the dynamite exploded, and the plaintiff was injured. *Held*, that the defendant is not liable. *State of Maryland* v. *General Stevedoring Co.*, 213 Fed. 51 (Dist. Ct., Md.).

The general rule that the employer is not liable for the negligence of an independent contractor is not applicable where the work, if done in the ordinary method, would be a nuisance. *Woodman* v. *Metropolitan R. Co.*, 149 Mass. 335, 21 N. E. 482. But the modern necessity for the manufacture and transportation of explosives has led the courts to refuse to impose absolute liability of this sort on the handlers of explosives. *The Ingrid*, 195 Fed. 596. The employer may also be held when the work undertaken by the independent contractor is inherently or intrinsically dangerous. *Doll* v. *Ribetti*, 203 Fed. 593; *Bower* v. *Peate*, L. R. 1 Q. B. D. 321. But the work must be so dangerous that injury probably will, and not merely may, result to third persons unless precautions are taken. *Davis* v. *Whiting & Son Co.*, 201 Mass. 91, 87 N. E. 199; *Bibb's Adm'r* v. *Norfolk & Western R. Co.*, 87 Va. 711, 725, 14 S. E. 163, 168. So if the danger lies solely in the possibility of some one doing an indefinite number of careless acts, the work will not be deemed intrinsically perilous. *Davis* v. *Whiting & Son Co.*, *supra*; *Engel* v. *Eureka Club*, 137 N. Y. 100, 32 N. E. 1052. Whether the transportation of dynamite is inherently dangerous is a question of some nicety, and the court was doubtless guided by a consideration of modern expediency, as well as by scientific facts, in concluding that it is not.

ASSAULT AND BATTERY — CIVIL LIABILITY — DEFENSES: CONSENT OF VICTIM OF STATUTORY RAPE. — To have carnal knowledge of a female less than sixteen years of age, not the wife of the perpetrator, was made rape by statute. COMP. LAWS, OKLA. (1909), § 2414; LORD'S OREGON LAWS, § 1912.

[6] The railroads in official classification territory have already filed with the Commission new tariffs increasing interstate passenger fares.